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Sub 51
a material for placement within the area of the containment rails, the material to absorb the spilled hazardous substance from the battery so that the hazardous nature of the spilled substance to humans or material structures is reduced.

44
46
45. (Amended) The battery spill containment system of claim 44 wherein the plurality of containment rails are coated with a coating to protect the containment rails from the spilled substance.

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46. (Amended) The battery spill containment system of claim 45 wherein the coating includes epoxy.

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51. (Amended) The battery spill containment system of claim 44 wherein the liner is resistant to damage from the spilled substance.

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53. (Amended) The battery spill containment system of claim 45 wherein the coating is a liquid when the coating is applied to the containment rails and after time, the coating dries into a solid.

REMARKS

Applicant appreciates the Examiner's diligent and thorough examination of this application and the telephone interviews with the Examiner on May 22, May 24, June 4 and June 5, 2002. This application is a continuation of U.S. Patent application serial number 09/428,192, which issued as U.S. Patent No. 6,308,728 B1. Claims 1-61 are pending in this application. None of the

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claims was rejected over the prior art. In fact, the only rejection of these claims was an obviousness-type double patenting rejection over the '728 patent, which should be obviated by the enclosed Terminal Disclaimer.

Additionally, even though claims 33 and 44 were not rejected over the prior art, Applicant has voluntarily amended independent claims 33 and 44 to recite a liner instead of a coating, which amendment is not necessary for patentability reasons under the Patent Laws and does not narrow the claims, because a coating is not a liner and Applicant would like to pursue coating claims in a separate continuation application. Similarly, dependent claims 34, 35, 40, 42, 45, 46, 51 and 53 were voluntarily amended to be consistent with the voluntary amendments to independent claims 33 and 44.

Obviousness-Type Double Patenting Rejection

The Examiner's only rejection of the claims is based on an obviousness-type double patenting rejection over the '728 patent. Accordingly, Applicant submits herewith a Terminal Disclaimer to obviate the obviousness type double patenting rejection, which puts the claims into condition for allowance.

Examiner's Request for IDS of Prior Art from Parent Cases

In the Office Action, the Examiner asked Applicant to submit an IDS citing the prior art from the parent case. Without knowing that the Office Action was mailed to Applicant, Applicant filed an Information Disclosure Statement on May 16, 2002, which includes the prior art previously cited in the parent case (now U.S. Patent No. 6,308,728) as well as references cited in a continuation-in-part (CIP) application serial number 09/602,276, which also has been allowed to issue into a patent. Applicant further submit a Supplemental IDS with this Response that cites U.S.

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Patent Nos. 3,952,907, 5,160,051, 5,295,591 and 5,865,323, which the Examiner previously considered for the parent case, and Article 64 of the Uniform Fire Code (1997). Of the references cited in the IDS and Supplemental IDS, only U.S. Patent No. 5,140,744 and Article 64 of the Uniform Fire Code were not previously seen by the Examiner (as can be ascertained by comparing the references with those cited on the face of the '728 patent). However, neither of these two references affect the patentability of the pending claims.

The '744 patent is directed to a multicell storage battery and rack, but fails to disclose a containment rail system with a liner or with a material that absorbs or chemically neutralizes battery spills. For example, FIG. 1 illustrates a battery made up of sixteen cells, which plainly does not disclose a containment rail system with a liner or a material that absorbs or chemically neutralizes battery spills. FIGs. 3-5 depict a rack having four compartments 32 to hold a battery; however, it is also plain that they do not disclose a containment rail system with a liner or with a material that absorbs or chemically neutralizes battery spills. Lastly, FIG. 6 is a safety shield, which is irrelevant.

Similarly, Article 64 of the Uniform Fire Code is devoid of any details and does not disclose a containment rail system having a liner. Article 64 was cited to Applicant by the Ramsey Group, who is in litigation with Applicant regarding the parent, U.S. Patent No. 6,308,728 (Ramsey Group, Inc. v. EGS International, Inc. et al, 1:02CV77-C (WD NC)). The Ramsey Group alleges that they do not infringe the '728 patent and that the '728 patent is invalid and/or unenforceable. The only reference expressly cited by the Ramsey Group is paragraph 6404.4 of Article 64 of the Uniform Fire Code, which is cited in the attached Supplemental IDS. Presently, the '728 patent is no longer asserted against the Ramsey Group and a continuation-in-part patent, U.S. Patent No.

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6,395,417 B1, was recently asserted against the Ramsey Group (Expo Power Systems, Inc. et. al v. Ramsey Group, Inc., Civil Action no. 02-4212 TJH (Ex) (C.D. Cal.)).

However, Article 64 does not invalidate any of claims 1-61. More specifically, paragraph 6404.4 of Article 64 recites "Each rack of batteries, or group of racks shall be provided with a liquid-tight 4-inch (101.6 mm) spill-control barrier which extends at least 1 inch (25.4 mm) beyond the battery rack in all directions". Thus, paragraph 6404.4 merely states that there must be a "spill-control barrier." It does not specify that what kind of barrier. It does not say that the barrier can include a liner. It does not say that the barrier can be formed out of the combination of a containment rail system PLUS a liner in the containment rail system. As discussed with the Examiner during the telephone interviews, Examiner re-acknowledged that the containment rails in the present application need not be stacked and need not form a rack, and that a containment rail comprises, for example, an individual rail 16 shown in FIG. 5. Similarly, paragraph 6404.5 states that the battery spill shall be neutralized, but does not say there should be a liner and a material on the liner to do so. Applicant is not aware of any prior art that used a liner. Because all of the independent claims, as amended, require a containment rail system and a liner (or an insert), all of the claims including the dependent claims are patentable over Article 64 of the Uniform Fire Code.

CONCLUSION

Based on the foregoing remarks and the submission of the Terminal Disclaimer, the claims are in condition for allowance and Applicant respectfully seeks an early allowance of the claims. Should the Examiner have any questions regarding this Amendment, he is invited to call the undersigned attorney at 949-567-2300 at his convenience.



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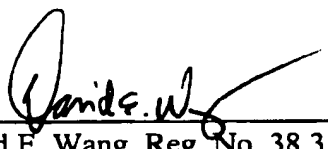
Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attachment is captioned "Version With Markings To Show Changes Made."

Respectfully submitted,

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Dated: June 5, 2002

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267/089**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

33. (Amended) A spill containment system for containing a hazardous spilled substance from a battery, the spill containment system comprising:

a plurality of containment rails to define an area for housing at least one battery;

a ~~coating~~ liner in the area defined by the containment rails, the ~~coating~~ liner to protect the area from the spilled substance; and

a material for placement within the area of the containment rails, the material to absorb and chemically neutralize the spilled substance from the battery so that the hazardous nature of the spilled substance to humans or material structures is reduced.

34. (Amended) The spill containment system of claim 33 wherein the plurality of containment rails are coated with ~~the~~ a coating to protect the containment rails from the spilled substance.

35. (Amended) The spill containment system of claim ~~33~~ 34 wherein the coating includes epoxy.

40. (Amended) The spill containment system of claim 33 ~~further comprising a~~ wherein ~~the liner for placement within the area defined by the plurality of containment rails, the liner being~~ is resistant to damage from the spilled substance.

42. (Amended) The spill containment system of claim ~~33~~ 34 wherein the coating is a liquid when the coating is applied to the ~~area defined by the~~ containment rails and after time, the coating dries into a solid.

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44. (Amended) A battery spill containment system comprising:
- a plurality of containment rails to define an area for housing at least one battery;
 - a ~~coating~~ liner in the area defined by the containment rails, the ~~coating~~ liner to protect the area from a spilled substance from the battery; and
 - a material for placement within the area of the containment rails, the material to absorb the spilled hazardous substance from the battery so that the hazardous nature of the spilled substance to humans or material structures is reduced.
45. (Amended) The battery spill containment system of claim 44 wherein the plurality of containment rails are coated with ~~the~~ a coating to protect the containment rails from the spilled substance.
46. (Amended) The battery spill containment system of claim-44 45 wherein the coating includes epoxy.
51. (Amended) The battery spill containment system of claim 44 ~~further comprising a wherein the liner placed within the area defined by the plurality of containment rails, the liner being is~~ resistant to damage from the spilled substance.
53. (Amended) The battery spill containment system of claim-44 45 wherein the coating is a liquid when the coating is applied to ~~the area defined by~~ the containment rails and after time, the coating dries into a solid.